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*KENNETH CANNATA*

8  
9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 HP TUNERS, LLC, a Nevada limited liability  
12 company;

13 Plaintiff,

14 vs.

15 KENNETH CANNATA,

16 Defendants.

CASE NO. 3:18-CV-00527-LRH-WGC

**ORDER GRANTING**  
**JOINT MOTION TO MODIFY**  
**SCHEDULING ORDER**  
**(Third Request)**

17  
18 Pursuant to Fed. R. Civ. P. 16, and for the reasons enumerated in the accompanying  
19 Memorandum of Law in Support, Plaintiff HP Tuners, LLC (“HP Tuners” or “Plaintiff”) and  
20 Defendant Kenneth Cannata (“Cannata” or “Defendant”) (together, the “Parties”), by and through  
21 their respective counsel, hereby jointly move to modify the Court’s Scheduling Order dated July  
22 September 26, 2019 [ECF No. 47] which were stayed and modified as set forth in this Court’s  
23 Minutes of Proceeding dated August 11, 2020 [ECF No. 78]. This is the third motion to extend  
24 time to take discovery.

25 The Parties propose an amended schedule extending the rebuttal expert disclosure deadline  
26 by twenty-one (21) days and the remaining deadlines by approximately sixty (60) days, thereby  
27 providing for the following deadlines:  
28

- March 31, 2021 Discovery Cutoff Deadline
- January 8, 2021 Rebuttal Expert Disclosures
- May 3, 2021 Dispositive Motion Deadline
- June 3, 2021 Joint Pre-trial Order Deadline

A Memorandum of Law follows detailing the specific modifications requested and the arguments in support of this Joint Motion.

DATED this 14th day of December 2020.

MARKS & KLEIN

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/s/ Andrew P. Bleiman, Esq.  
Andrew P. Bleiman, Esq.

/s/ Bart Larsen, Esq.  
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LEE HIGH, LTD.  
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### **MEMORANDUM IN SUPPORT OF JOINT MOTION TO MODIFY SCHEDULING ORDER**

On September 26, 2019, this Court entered a scheduling order (the “Scheduling Order”) setting forth a number of deadlines, which include:

- March 31, 2020 Discovery Cut-off
- February 7, 2020 Expert Disclosures
- March 6, 2020 Rebuttal Expert Disclosures
- December 2, 2019 Deadline to Amend Pleadings and Add Parties
- May 8, 2020 Deadline to File Dispositive Motions
- June 5, 2020 Deadline to File Pretrial Order

[ECF No. 47]. Subsequently, the Court stayed these deadlines as a result of the pending motions and Plaintiff’s request to modify the Scheduling Order [ECF No. 64]. The Court subsequently vacated the deadlines outlined in ECF No. 64 and stayed discovery ninety (90) days because of

1 health concerns of Cannata [ECF No. 72]. On August 11, 2020, the Court held a telephonic status  
2 conference to discuss Cannata's health status and set the following discovery deadlines:

- 3 • January 29, 2021 Discovery Cut-off
- 4 • November 20, 2020 Expert Disclosures
- 5 • December 18, 2020 Rebuttal Expert Disclosures
- 6 • February 26, 2021 Deadline to File Dispositive Motions
- 7 • March 26, 2021 Deadline to File Pretrial Order

8 [ECF No. 78].

9 The parties seek an amended scheduling order to extend the rebuttal expert disclosure  
10 deadline by twenty-one (21) days and the remaining deadlines by approximately sixty (60) days,  
11 resulting in the following deadlines:

- 12 • March 31, 2021 Discovery Cutoff Deadline
- 13 • January 8, 2021 Rebuttal Expert Disclosures
- 14 • May 3, 2021 Dispositive Motion Deadline
- 15 • June 3, 2021 Joint Pre-trial Order Deadline

16 Pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, a scheduling order may  
17 be modified "for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4); *see also* Fed.  
18 R. Civ. P. 16 advisory committee's notes (1983 amendment) (The district court may modify the  
19 pretrial schedule "if it cannot reasonably be met despite the diligence of the party seeking the  
20 extension.").

21 Here, good cause exists. COVID-19 and its impact on availability of parties and nonparties  
22 alike has resulted in this Court staying discovery for periods of ninety (90) days. The Parties have  
23 been working diligently to engage in discovery, but the current pandemic has made it difficult.  
24 Moreover, with the holidays, the Parties feel it necessary to provide additional time to retained  
25 rebuttal experts in order to properly address the expert reports disclosed in this matter. The Parties  
26 have conferred and jointly determined that the deadlines set forth in the current Scheduling Order  
27 (which were subsequently stayed and amended) cannot reasonably be met due to the significant  
28 discovery demands involved in this litigation. The Parties are currently engaged in extensive  
discovery, including considerable third-party discovery as well. Additionally, the Parties have

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1 been enlisting the services of outside vendors to comply with this Court's orders regarding forensic  
2 examination of Defendant's devices.

3 Although the parties have been diligent in their efforts to comply with all deadlines, the  
4 Parties respectfully request the Court grant this Joint Motion to Modify Scheduling Order, and  
5 extend the rebuttal expert disclosure deadline by twenty-one (21) days and the remaining deadlines  
6 by approximately sixty (60) days in accordance with the proposed dates set forth above. At this  
7 time, the Parties do not anticipate that further extensions of the schedule will be necessary.

8 DATED this 14th day of December 2020.

9 MARKS & KLEIN

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10 /s/ Andrew P. Bleiman, Esq.

11 Andrew P. Bleiman, Esq.

/s/ Bart Larsen, Esq.

Bart Larsen, Esq.

Kyle M. Wyant, Esq.

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Cecilia Lee, Esq.

13 Elizabeth High, Esq.

*Attorneys for Defendant Kenneth Cannata*

14 *Attorneys for Plaintiff HP Tuners, LLC*

20 **There shall be no further extensions granted barring unforeseen and extenuating circumstances.**

21 **IT IS SO ORDERED.**

22 William G. Cobb

23 HONORABLE WILLIAM G. COBB

24 UNITED STATES MAGISTRATE JUDGE

25 DATED: December 15, 2020